The International Bar Association Company Director Checklist – Portugal

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Introduction

This Company Director Checklist is intended to serve as a practical guide to the main duties and obligations of the directors of:

- listed public companies in Portugal, listed on a regulated market, i.e. Euronext Lisbon;
- private limited companies in Portugal ("sociedades anónimas");

namely arising from the:

- Commercial Companies Code ("Código das Sociedades Comerciais");
- Securities Code ("Código dos Valores Mobiliários") and related regulations;
- Insolvency and Corporate Recovery Code ("Código da Insolvência e da Recuperação de Empresas").

If any specifics of listed public companies are relevant, see the third column of this checklist below.

Disclaimer

This checklist is informational in character only and is not intended to be comprehensive in all respects or to serve as a substitute for professional advice. In all cases, however, specific legal advice should be sought. This checklist was last updated on 28 February 2022.

DUTIES AND OBLIGATIONS OF THE DIRECTORS			
	Action/issue	**Specifics of listed public companies (if relevant)**	**Comments/notes**
Before appointment			
1. Items to understand	▪ Directors must be individuals of full legal capacity or legal persons. If a legal person is appointed as a director, it must, in turn, appoint an individual to be elected for office on its behalf (liability in such event is joint and several). A director is not required to be a shareholder, resident in Portugal or Portuguese national. Nevertheless, certain formalities must be complied with where a foreign director is appointed, notably in respect of his / her registration with the Portuguese Tax Authorities and Social Security. ▪ Directors may be appointed in the company's deed of incorporation or by resolution of a general meeting of shareholders. The appointment is effective for the period stipulated in the bylaws, which may not exceed four calendar years. Furthermore, where the company's bylaws do not set out the period of appointment, such period is deemed as four calendar years. Reappointment of directors is permitted. Although appointed for a fixed period of time, directors remain in office until their replacements are appointed, unless they are dismissed or resign.	▪ Before the appointment, listed public companies should submit to the Securities Exchange Commission (CMVM) questionnaires assessing the independence requirements pursuant to the Portuguese Institute of Corporate Governance (IPGC) Corporate Governance Code (soft law). Those are filled out by the proposed directors prior to the disclosure of the election proposal. ▪ New directors must inform the company, prior to their appointment, of: (a) other companies (civil or commercial) in which they hold corporate positions, with the exception of professional companies; and (b) shares held in civil or commercial companies. ▪ Directors shall also pay the deposit or sign an insurance contract for their position, up to thirty days after their appointment or election, in a minimum amount of €250,000. ▪ New directors must inform the company of the number of shares and bonds of the company or Group companies that they hold, as well as all their acquisitions, encumbrances or disposals - including the conclusion of promissory, option, repo or other contracts producing similar effects, in	▪ The appointment of directors must be registered before the Commercial Registry Office, which shall afterwards notify said appointment *ex-officio* to the Portuguese Tax Authorities and Social Security (save when the appointment is made at the time of the company's incorporation, which requires that the company itself carries out such registration).

	▪ In 2021, an amendment to the Portuguese Commercial Companies Code came into force requiring the submission, for purposes of registration of the director's appointment, of a statement by the director accepting the appointment and confirming that he is not aware of any circumstances that may inhibit him from holding office. ▪ Each company is required to file a statement with the central register of beneficial owners (CRBO) with information about the natural persons who directly or indirectly owns or controls at least 25% of the company's capital or voting rights or by any other means exercises control over the Company. If there is no individual who directly or indirectly owns or controls 25% of the company's capital or voting rights or by any other means exercises control over the Company, the persons who hold the top management positions (directors) in the company will be identified as its beneficial owners. ▪ Other issues may be considered by the director before his /her appointment, such as: - requirements and prerequisites for serving as a member of the statutory body.	respect of shares and bonds held at the date of the appointment or election, within 30 days thereafter. ▪ This rule also applies to shares and bonds: - Of the spouse not judicially separated, whatever the matrimonial property regime; - The minor descendants; - The persons in whose name the shares or bonds are, having been acquired in rule of the above-mentioned persons. - Belonging to a company of which the above-mentioned persons are partners with unlimited liability, or exercise the management or any of the managerial or supervisory positions. ▪ New directors shall draw up and submit to the company a list of all persons closely associated with them as per the list above. ▪ For public listed companies, the appointment of directors must be disclosed at the CMVM's website. Any change to the information submitted to the CMVM must be updated, particularly the information in the fields relating to the independence criteria. ▪ New directors of a public listed company should also consider that a person discharging managerial responsibilities within a public listed company shall not conduct any transactions on its own account or for the account of a third party, directly or	

	- precise nature and scope of the company's business activities; - time commitment required; - skills the company needs; - current corporate structure; - company's corporate governance framework, if any; - remuneration; - etc.	indirectly, relating to the shares or debt instruments of the company or to derivatives or other financial instruments linked to them during a closed period of 30 calendar days before the announcement of an interim financial report or a year-end report which the company is obliged to make public.	
2. People to meet with	▪ Other directors. ▪ Management team. ▪ Company's legal and tax advisors (external and internal).		
3. Documents to review	▪ Bylaws. ▪ Internal regulations. ▪ Resolution appointing the Director. ▪ Company's last accounts and annual reports on its business activity. ▪ Litigation report from legal counsel. ▪ Business plan and approved budget. ▪ Directors must have or obtain a Portuguese taxpayer identification number.	▪ Listed companies disclose in their website relevant information that may be reviewed by the Director, such as: by-laws, regulations of the corporate bodies, major internal policies and procedures, remuneration policy, financial statements, including corporate governance report and annual remuneration report, press releases with privileged information, etc.	

	▪ If directors do not have a permanent residence in the EU, it will also be necessary to appoint a Portuguese tax representative.		
	Ongoing duties		
4. Points for attention	▪ The board of directors is in charge of the management of the company's business; they make the strategic and operational decisions of the company and are responsible for ensuring that the company meets its statutory obligations. ▪ The majority of the board's members must attend or be represented (if permitted by the bylaws) at board meetings for a valid convening quorum. The resolutions are passed with the majority of the votes of the directors present or represented at the relevant meetings (and, if permitted by the bylaws, of the directors voting by mail). The chairman has a casting vote whenever the board of directors is composed of an even number of members and as provided for in the bylaws.	▪ Directors should, by January 31st of each year, complete and submit to the company, a list of: (a) other companies (civil or commercial) in which they hold corporate positions, with the exception of professional companies; and (b) shares held in civil or commercial companies. ▪ Directors should inform the company, by January 31st of each year (and, in any case, in time for the preparation of the annual report of the management body), the number of shares and bonds held in the company or/and companies of the group.	▪ The board of directors is subject to the resolutions of the general meeting of shareholders or to the intervention of the audit board or the audit commission only to the extent provided by law or in the bylaws.
5. Legal status of directors	▪ The board of directors is the body responsible for managing the company's business, and is responsible for carrying out all acts relating to the pursuit of the company's purpose. It is the representative body of the company. ▪ The rights and duties that are part of the legal status of directors have their source		▪ The directors are appointed by the shareholders to manage its day-to-day affairs. The basic rule is that the directors should act together as a board but typically the board may also delegate certain powers to individual directors or to a committee of the board.

	in the law, in the articles of association and in corporate resolutions (or even, provided certain conditions are met, in shareholders' agreements). A general principle of equality of functional rights and duties applies between directors of the same company.		
6. Parties to which duties are owed	▪ Directors shall perform their duties with the diligence of a judicious and organised director, in the interest of: the company, its shareholders, employees and stakeholders or "interested parties" - namely clients, suppliers and financers and, in some circumstances, all those who may in some way be affected by the company's activity and suffer damage as a result of the directors' conduct, even though they may not have a specific contractual relationship with it.		
7. Powers of the board of directors	▪ The board of directors is the company's managing body and is, as such, empowered to resolve on any matters regarding the management of the company. ▪ The law lists the acts considered to be management acts, including, as typical management acts, the preparation of reports and annual accounts, the acquisition of real estate and of any movable and intangible assets and the	▪ Among other duties, the directors of public listed companies must e.g. ensure that the company publishes its annual and semi-annual reports in a duly and timely manner, prepare a detailed report on renumeration of its directors and a report on material transactions with related persons, and disclose any changes on the list of closely related persons and on the questionnaire on independence and incompatibilities submitted at the time of appointment.	▪ Unless prohibited by the bylaws, the board may commission a director with the task of carrying out certain acts that fall within the company's object, and without such commission limiting the normal powers of the other directors. Certain specific matters may not be entrusted to directors and must therefore be resolved upon by the board, such as those related to the operation of the board (appointment of the chairman and co-opting of directors), to changes to the bylaws (change of the registered offices or increases of the share

	acquisition, opening and closure of business premises. ▪ The representation powers of the board of directors are exercised jointly by directors and the company is bound by the acts or contracts executed (or ratified) by the majority of its members, save where the bylaws stipulate an inferior number. The by-laws may also set forth binding of the company through managing directors within the scope of the powers delegated in them by the board of directors.		capital) or to significant changes in the company's activity (merger, spin-off and transformation projects), among others.
8. Duty of loyalty	▪ Directors are subject to a duty of loyalty, in the best interest of the company, taking into account the interests of the shareholders and considering also those of the stakeholders (such as employees, clients and creditors). ▪ It is the expectation of honest and trustworthy behaviour and the fiduciary position occupied by the director, in their capacity as managers of others' property, which is the basis for the reliance and trust of the company and, therefore, the imposition of a duty of loyalty. ▪ Some expressions of the duty of loyalty are set forth in Portuguese law: this is the case of the duty of non-competition, or the rules on the contracting of the director with the company (self-dealing), or even		▪ The duty of loyalty must steer the directors in taking management decisions. Most authors tend to view this fiduciary duty as autonomous ground of the liability of directors.

	the rules on the impediment to vote in the board of directors. ▪ The prohibitions of competition and of taking advantage of business opportunities of the company are also of crucial importance, as well as the conduct duties in company acquisitions (for example, takeover bids) or even the typical cases of perpetuation of control. Also, confidentiality obligations are often studied from the perspective of loyalty.		
9. Duty of care	▪ Directors are subject to a duty of care, which requires that directors have the availability, technical skills and information on the activity of the company required to the performance of their office and apply to it the diligence of a judicious and organised director. ▪ This duty implies that directors must apply to organisational, decision-making and corporate control activities the time, effort and know-how required by the nature of their duties, their specific qualifications and the circumstances.		▪ The duty of care must steer the directors in taking management decisions. Most authors tend to view this fiduciary duty as autonomous ground of the liability of directors. ▪ The duty to act thoroughly (with duty of care) is closely associated with the duty to be informed, i.e.: - to obtain reasonably available (both factual and legal) information regarding the decision in a particular matter prior adopting such decision (information on the consequences, risks and available alternative scenarios and to carefully assess the possible advantages and disadvantages (identifiable risks) of the respective decision),

			- to be informed of the company's losses/profits, threatening damage and business opportunities.
10. Duty to have and maintain skills	▪ Directors shall have the technical competence and knowledge of the activity of the company adequate to his duties and using in that extent the diligence of a judicious and organised director.	▪ Nowadays diversity among the members of the board, including diversity of skills, is also relevant and included in the IPCG Corporate Governance Code.	▪ This duty is associated with the obligation to manage the company in accordance with the degree of skill and diligence as would amount to the reasonable care that an ordinary person would be expected to have under similar circumstances. The standard is subjective insofar as it encompasses reference to the particular abilities of the relevant director.
11. Additional duties (confidentiality, etc.)	▪ The director has the fundamental duty of managing and representing the company. ▪ The director is also subject to a duty of legality, which means that when managing and representing the company, the director has the duty to adopt a conduct that ensures the respect for the duties of the company. This duty of legality is nothing more than the imperative of directors to respect the duties of the company, ensuring its compliance. Although the framework is addressed to the company as a legal entity, it is the director(s) who ensure compliance. ▪ The director also has a duty of vigilance towards the company. The board of directors is first and foremost the control or monitoring centre of the company. This	▪ Whenever disclosure of inside information is being delayed, the confidentiality of that information should be ensured at all times. Whenever the confidentiality is no longer ensured, disclosure to the market should occure as soon as possible.	▪ The duty of loyalty and the duty of care are also the source from which other specific legal duties derive, such as the duty not to act outside the company's permitted scope of activities, not to carry out acts that are not profit-orientated, not to execute board resolutions that are null and void, to collect deferred share capital payments and non-competition, among others. ▪ Directors also owe a duty of confidentiality to the company, which is part of their duty of loyalty. It follows from the duty of loyalty that directors are obliged to maintain confidentiality of all the confidential information and facts, the disclosure of which to third parties could cause damage to the company (incl. the company's trade secrets and know how).

	involves both supervision within the Board of Directors and supervision at the lower levels of the company. Vigilance is systematic and involves the delimitation of layered control mechanisms throughout the hierarchical structure.		
12. Delegation of powers/authority	▪ The board of directors may specifically charge one or more directors with specific management matters or, if permitted by the bylaws, delegate current management of the company to one or more directors or an executive committee. ▪ Certain specific matters may not be entrusted to directors and must therefore be resolved upon by the board, such as those related to the operation of the board (appointment of the chairman and co-opting of directors), to changes to the bylaws (change of the registered offices or increases of the share capital) or to significant changes in the company's activity (merger, spin-off and transformation projects), among others. ▪ As regards authority, the company is bound by directors, within the limits of the powers granted to them by law, irrespective of the limitations arising from the bylaws or from resolutions of the general meeting of shareholders. Nevertheless, the company may avoid binding before third parties if the directors acted outside the company's permitted	▪ Public listed companies usually have a Board of Directors and an Executive Committee (or similar structure, as per other governance models). The IPCG Corporate Governance Code includes requirements on the ratio of non-executive directors and of independent directors and on the type of matters that should not be delegated into the executive committee, namely, in what regards: i) the definition of the strategy and main policies of the company; ii) the organisation and coordination of the business structure; iii) matters that should be considered strategic in virtue of the amounts involved, the risk, or special characteristics.	▪ Both in the event of charging specific management powers and of delegation of the current management of the company, the board of directors continues to be empowered to resolve on the charged or delegated matters. ▪ In addition, nonexecutive directors are liable for the general surveillance of the activity carried out by managing directors and for damages arising from the actions or omissions of managing directors under a delegation of powers, save to the extent they have caused the board of directors to intervene for the purposes of approving appropriate remedial measures.

	scope of activities, to the extent that it provides evidence that the third party knew or could not ignore, given the circumstances, that the relevant act or contract exceeded such scope and provided that, in the meantime, the shareholders did not ratify such act or contract.		
13. Conflicts of interest (inc. intragroup dealings)	▪ The main legal regime governing the duties of directors within the scope of conflicts of interest between the directors and the company encompasses the following: - a company may not grant loans, make payments on account of directors, provide guarantees to secure obligations of directors or make advances in excess of one month's pay of the director(s); - directors may not be parties to an employment or services contract with the company during the period in office as directors (if prior to the appointment as directors they had such contracts, these shall be suspended during the period of office); - contracts between the company and a director (other than those stated in the preceding paragraphs) must be authorised by the board of directors (the relevant director shall be deemed	▪ The IPCG Corporate Governance Code recommends companies to aprove specific rules on conflicts of interests, including rules that prevent the person in conflict (e.g. a director) not only to vote but also to participate in any decisions relating to such topic. ▪ Due to the potential risks that they may hold, transactions with related parties should be justified by the interest of the company and carried out under market conditions, subject to principles of transparency and adequate supervision. ▪ The Portuguese Securities Code includes rules for these transactions, transposed from the SRDII. It determines that listed public companies must have an internal procedure approved by the management body, with a prior binding opinion of the supervisory body, through which the latter periodically verifies if the transactions that the listed public companies carry out with related parties are carried out within the	

	as in conflict with the company and therefore impaired from voting), have the favourable opinion of the audit board or the audit commission and be specifically addressed to in the annual accounts documents of the company – this does not, however, apply to the extent such contract is included in the company's activities and no special advantage arises to the relevant director; - directors may not directly or indirectly compete with the company or perform office in or be appointed on behalf of any competing company, save if the general meeting of shareholders has consented to such activities; and - directors in conflict of interest with the company are impaired from voting in the relevant resolutions and must report such conflict to the chairman.	scope of their current activity and under market conditions, with the related parties not participating in the verification in question. ▪ The transactions with related parties that do not comply with the requirements foreseen in the previous paragraph are subject to resolution by the management body, preceded by an opinion of the supervisory body. Also, they must be publicly disclosed when its value is equal to or greater than 2.5/prct. of the company's consolidated assets, or of its individual assets in case the company does not prepare consolidated accounts and does not meet the requirements of the paragraph above, no later than the time at which they are realised.	
14. Compliance with statutory obligations	▪ Directors are subject to a wide set of specific statutory obligations. These obligations include: - the duty not to act beyond the corporate purpose; - the duty to not distribute non-distributable corporate assets or dividends without the prior authorization of the shareholders;	▪ Several additional rules and regulations are applicable to public listed companies and their directors, including EU Regulation 596/2014 of 16 April 2014 (Market Abuse Regulation), including inter alia disclosure duties on privileged information and directors' transactions.	

	- the duty to call the general meeting in the event of loss of half of the share capital; - the duty to submit a management report and accounts; - the duty to perform their duties personally; - the duty to post bond or contract liability insurance ("D&O Insurance").		
15. Disclosure obligations of listed companies	N/A	Public listed companies have disclosure obligations related in particular with the Transparency Directive and Market Abuse Regulation. Main disclosure obligations include: ▪ Companies shall disclose individual and consolidated annual and half-year financial statements reports and accounts (as well as quarterly accounts, if applicable). ▪ With the annual accounts, companies must disclose reports on corporate governance, remuneration and non-financial information (the latter applicable only to certain larger companies). ▪ Companies shall disclose, in the annual and half-yearly reports and accounts, the list of the holders of qualifying holdings. ▪ Other disclosure obligation include (i) the shares held in companies based in a non-EU member state (ii) inside information (as better detailed in other sections), (iii) transaction on own shares and shares	

		traded by its directors and other relevant management; (iv) remuneration policy. ▪ The IPCG Corporate Governance Code also recommends the disclosure, inter alia, of internal regulations of corporate bodies and committees as well as identification of their members and number of meetings held.	
16. Potential liability	▪ **Liability vis-à-vis the company** Directors are jointly and severally liable before the company in respect of damages incurred by the company arising from unlawful actions or omissions of the directors, grounded in breach of their legal or contractual duties. ▪ **Liability vis-à-vis the company's creditors** Directors are jointly and severally liable vis-à-vis the company's creditors whenever the company's assets become insufficient to meet the company's debts as a result of the directors' intentional breach of their legal or contractual duties aiming to protect the creditors. ▪ **Liability vis-à-vis the shareholders and third parties** Directors may also be jointly and severally liable vis-à-vis the shareholders and/or third parties for damages incurred directly by the shareholders and/or third parties	▪ A claim against the directors may be brought by the company or, on its behalf, by the shareholder(s) holding at least 2/prct. if the company is listed. The company is not required to prove that the conduct of the directors resulted from willful misconduct or negligence, as there is a legal presumption to that effect. ▪ In respect of public offers, directors may be responsible for the information in a prospectus, and any supplement thereto. The persons responsible for the prospectus, and any supplement thereto, will be clearly identified in the prospectus. Usually D&O policies are put in place to cover this risk.	▪ Portuguese law provides for an assumption of fault as regards actions or omissions of directors, meaning that the burden of proof to challenge such assumption is borne by the directors concerned. Nevertheless, evidence of the remaining prerequisites of civil liability (unlawful action or omission, damages and linkage between the foregoing) lies with the claiming party. ▪ Directors that have not participated in or that voted against a resolution of the board may also set aside their liability on such grounds. ▪ Clauses excluding or limiting the liability of the directors or requiring that a claim against a director be dependent upon (1) a prior opinion or resolution of the shareholders as regards claims filed by shareholders on behalf of the company or (2) a prior court judgment on the existence of the cause of the liability or of the dismissal of the relevant director are not allowed under Portuguese law.

	arising from the performance of their duties.		▪ The general statute of limitation applying to civil liability of directors is five years (save to the extent the unlawful action or omission is punishable as a criminal offence and the applicable statute of limitation is longer, in which event such longer statute of limitation applies).
17. Duration of duties	▪ Directors are appointed for the period set out in the articles of association, which shall not exceed four calendar years.		▪ In the absence of such indication in the articles of association, the term of office shall have the duration of four calendar years, re-election being allowed.
		Special circumstances	
18. Bankruptcy	▪ The courts will hold an insolvency to be wrongful when it results from the fraudulent action or serious fault of the insolvent or its legal or de facto directors in the three years prior to the start of the insolvency proceedings. This is the general principle. ▪ The insolvency of a company is always considered wrongful, when its legal or de facto directors: a) destroy, damage, make unfit for use, conceal or cause to disappear either all or a significant part the debtor's assets; b) create or artificially increase liabilities or losses, or reduce profits, notably by causing the debtor to enter into damaging transactions either for their own benefit or that of others with	▪ The insolvency of a public listed company triggers exclusion from trading as the admission requirements are no longer fulfilled, i.e. the company can no longer prove that its economic and financial situation is compatible with the nature of the securities to be admitted and with the market where the admission is requested. ▪ Also, it consists of inside information and thus follows the framework on disclosure provided for in the EU legislation on market abuse.	▪ Where a company is declared insolvent, its directors will, in most cases, be deprived of their powers to manage and dispose of the company's assets and will cease to be remunerated. However, they may keep their position. ▪ If the court holds that the company's insolvency is wrongful, the court's judgment must identify the legal or de facto directors responsible. The judgment must also ban the persons in question from managing the assets of third parties and from engaging in commercial activities for a period between 2 and 10 years (including a ban on holding office in any legal entities). Besides this, the court must decide on the loss of any credits held by the directors from the company (directors

	whom they have a special relationship; c) purchase goods on credit, reselling those goods or transferring them as payment at a price considerably lower than the actual one, before satisfying the obligation; d) dispose of the debtor's assets for their own benefit or that of third parties; e) carry on, under cover of the legal personality of the company, if applicable, an activity for their own benefit or that of third parties, to the detriment of the company ; f) use the debtor's assets or credit in contradiction with the debtor's interests, for their own benefit or that of third parties, in particular to favour another company in which they hold a direct or indirect interest; g) execute, for their own benefit or that of third parties, an operation at a loss, in spite of knowing, or being under the duty to know, that the latter might easily lead to a situation of insolvency; h) materially breach the obligation of keeping organised accounting, keep false accounts or double accounts, or commit an irregularity with significant detriment to the understanding of the debtor's assets or financial status; i) repeatedly breach their duties of presentation and cooperation up until the date of the order that declares the opening of the process to classify the		will also be ordered to return any amounts or assets received from the company to settle their credits) and order the directors to indemnify the insolvency creditors for their unpaid credits, with the limit of the directors' own assets. The liability is joint and several among all the directors affected by the classification of the insolvency as wrongful. ▪ If the insolvency is considered to be wrongful, this may also give rise to criminal liability on the part of the persons identified by the court as being responsible. Among others, we have the: a) Crime of "negligent insolvency", which is punished with a prison sentence until one year or with a fine up to 120 days (each fine day corresponds to an amount ranging from 5 to 500 euros) and envisages the situations where the debtor due to a serious negligence or imprudence, prodigality or manifestly exaggerated expenses or bad speculation, creates an insolvency status; or because he does not request on time any measure to recover the company knowing that the company has economical or financial difficulties; and b) Crime of "malicious insolvency" is punished with a prison sentence of up to five years or with a fine up to 600 days and encompasses most of the

	insolvency as wrongful. ▪ Engaging in any of the types of conduct described above will lead to an irrebuttable presumption that the insolvency is wrongful. ▪ Besides the conduct described above, the insolvency will be presumed wrongful whenever the legal or de facto directors have breached the following duty and obligations: (i) the duty to submit the company to insolvency proceedings within 30 days of their knowledge of the actual or imminent insolvency situation (as a general rule, a company is considered insolvent whenever it is not capable of meeting its obligations as they fall due or if its liabilities exceed its assets) and/or (ii) the obligations to prepare the annual accounts, within the period of time established by law, to submit the annual account to supervision or to deposit them at the companies registry office. ▪ Directors are also obliged to collaborate and to provide all information required by the court in an insolvency proceeding. ▪ Among others, failure by the Board of Directors to comply with the duty to file for insolvency is deemed by law as an iuris tantum assumption of malicious insolvency.		situations described here.

19. Takeover bids		From the perspective of a company that is the target of a takeover bid, we highlight the following: ▪ The target's board of directors must issue a report on the merits of the offer conditions, which must be disclosed to the public. ▪ Regarding reactive measures, it should be noted that the target board of directors' scope of action is limited to day-to-day management after it becomes aware of the takeover, to ensure there are no significant changes to the target's financial position (the so-called neutrality rule). ▪ Without prejudice to the neutrality rule, the board of directors may still use anti-takeover defences, even going beyond day-to-day management actions, to the extent such measures are approved by a supermajority at a general shareholders meeting. Shareholders may approve any defensive measures which the board of directors will then have to respect. Even without shareholder approvals, the board of directors, by itself, may take initiative to seek competing bidders. Finally, even if frowned upon under good governance standards, "golden parachutes" are not in general forbidden (although they must be disclosed) and may also serve as an indirect means of protection of the directors.	

20. Market abuse/insider dealing		▪ This matter is presently regulated by EU Regulation 596/2014 of 16 April 2014 (Market Abuse Regulation) without relevant Portuguese specific rules. The use and disclosure of inside information in relation to securities and other financial instruments is prohibited mentioned regulation and may give rise to criminal liability. ▪ The prohibition provided for in the preceding paragraph shall not apply to transactions, orders, conducts and activities expressly excluded by the applicable regulations.	▪ As this matter is currently completely ruled by European Union legislation and regulations on market abuse, there are no Portuguese specific relevant duties to take into account.
Defences			
21. Good corporate governance		▪ Public listed companies must report on compliance (or not) with the IPCG Corporate Governance Code (soft law), which includes principles and recommendations on several good governance practices, including conflicts of interest, shareholder rights, independence, remuneration, supervision, internal control, etc. ▪ Also, a reinforced governance model for public listed companies imposes (i) a supervision encompassing a supervisory board (where the majority of members, including the chairman must be independent) and a separate independent statutory auditor, and (ii) imposing the chairman of the board of the general	

		meeting also to comply with independency criteria.	
22. Minutes of board meetings and publication requirements	▪ The meetings of the board of directors must be recorded in minutes. The minutes shall be recorded in the company's minutes book. ▪ There are no publication requirements for the minutes of board of directors' meetings, except when the board of directors' resolutions are related to the practice of acts subject to registration (e.g. approval of amendments to the bylaws, capital increases, mergers or demergers, etc.)	▪ The approval of accounts by the board triggers the disclosure of financial result as inside information on the company's website and on the CMVM's SDI, since this constitutes information which may have a significant influence on the price of securities.	
23. Discharge and Indemnification	▪ If the director is able to prove that he acted in an informed manner, without any personal motivation or interest and based on rational entrepreneurial criteria, his conduct is considered to be lawful, and no indemnity obligation may be imposed on him. ▪ The directors are discharged upon expiry of the term they have been appointed for. If a term for which the directors have been appointed has expired without a shareholders' meeting having convened and appointed new members, the directors will remain in office until the appointment of substituting members.		▪ The business judgment rule operates as a cause for discharge of directors' liability. A director is not liable for a mistake in business judgment made in good faith and in what the director believed to be the best interests of the corporation. ▪ Portuguese law has adopted a restrictive approach to the business judgement rule, in the sense that directors are able to exclude liability if they provide evidence of having acted in an informed manner, without any personal motivation or interest and based on rational entrepreneurial criteria.

	▪ In addition, a director may be removed at any time by resolution of a shareholders' meeting. Such removal may be: (i) based on just cause; or (ii) without just cause, in which case the company may be liable to pay compensation to the dismissed director for the damages the latter suffered as a result of the dismissal. The compensation resulting from removal without just cause is capped and may not exceed the amount the director would have received up to the end of the period he/she had been elected for.		
24.Insurance	▪ As a rule, directors must guarantee the performance of office through a bond or insurance in the minimum amount of €50,000 (the general meeting of shareholders may nevertheless exempt directors). Such minimum amount is set at €250,000 in respect of companies issuing securities admitted to trading on a regulated market or companies that have exceeded, during at least two consecutive years, two of the following thresholds: - a €20,000,000 balance sheet; - €40,000,000 in net sales and other income; or - an average of 250 employees during the financial year. ▪ Nonexecutive directors and those who are not remunerated for the performance of	▪ Directors of public listed companies are required to provide a performance guarantee to cover potential liabilities (which may be replaced by the mentioned insurance). ▪ It is common market practice to have D&O insurance in place, in particular in respect of public offers where the responsibility for the information in a prospectus, and any supplement thereto, may lay, among others, in the directors.	▪ The performance of office must be guaranteed within 30 days of the appointment or election, and the guarantee must be maintained until the end of the calendar year following that in which the administrator ceases his or her duties for any reason. ▪ The costs triggered by bond/insurance may not be borne by the company (save if and to the extent the amount covered thereby exceeds the minimum amount provided for by law).

	their offices are exempted from providing such guarantees.		
25. Resignation	▪ A director may resign from office at any time by notifying the chairman of the board of directors. If the chairman is the one resigning, he / she must notify the audit board or the audit commission. The resignation becomes effective at the end of the subsequent month, except if in the meantime a new director is appointed to replace the resigning one.	▪ When a director resigns, public listed companies shall disclose that fact in the CMVM website.	▪ Resignation of a director must be registered before the Commercial Registry Office, which shall afterwards notify ex-officio the termination of office to the Portuguese Tax Authorities and Social Security. ▪ If the resignation of a director entails a change in the beneficial ownership statement filed in the Central Register of Beneficial Owners, this information must be updated within the shortest possible delay, but not exceeding 30 days from the date of any such change.
26. Restructuring of assets	▪ Most mechanisms for restructuring of assets are voluntary. Hence, there is no general duty on directors to request a restructuring procedure (either in or out of court). ▪ However, where a restructuring of assets is voluntarily submitted by a non-insolvent company and its creditors, the company (through its directors) must provide all information and documents required by the judicial administrator and by the creditors.	▪ A public listed company decision of restructuring assets shall be deemed inside information as it satisfies the criteria of inside information under EU legislation on market abuse, being thus subject to the disclosure requirements provided for thereunder.	▪ Where there is a choice to restructure a company that is either experiencing a difficult economic situation or is close to being insolvent, the directors can seek to restructure it either in or out of court. ▪ In contrast with insolvency proceeding, in these cases, the debtor stays in possession of its assets. Hence, the directors will remain with powers to dispose of a manage the company's resources (even if in some cases they must request authorisation to do certain acts). ▪ The company and its directors are held liable for any losses caused to the

	▪ Where an asset restructuring plan or an insolvency plan is approved, the company is obliged to comply with it. ▪ Directors performing their duties following the approval of an insolvency or restructuring plan may be liable, along with the company, for tax debts if, by their own fault, the assets of the company became insufficient to pay such debts.		creditors, during the restructuring processes, if the information, documentation, or communications are incorrect or incomplete.
27. ESG and D&I policies, metrics, reports	▪ There are several legal instruments in Portugal directly or indirectly related to ESG matters. ▪ Concerning the environmental dimension, the following is noteworthy: - the Portuguese Criminal Code sets out different types of environmental crimes and that environmental damages may determine the attribution of compensation; - The Basic Law no. 19/2014 establishes a legal regime of general principles of environmental policy, which is subject to a more detailed regulation in other diplomas regarding waste management, sustainable water management and energy and climate. ▪ Regarding matters of a social nature, it is important to highlight that:	▪ Public listed companies that are large undertakings exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for equality between men and women, non-discrimination, human rights, anti-corruption and bribery matters. In case any of these matters is not considered, a clear justification must be presented. ▪ This information should include: (i) A brief description of the company's business model; (ii) A description of the policies pursued by the company in relation to the matters	

	(i) arbitrary discrimination is prohibited in Portuguese Constitution, Criminal Law, Civil Law and Labour Law. (ii) Law no. 93/2017 provides the regime for prevention, prohibition and combatting of discrimination; and (iii) Law no. 62/2017 establishes regulation for a balanced representation between men and women in management and supervisory bodies of listed companies and corporate public sector entities.	referred to, including the due diligence processes applied and the results of the policies; (iii) The principal risks associated with the issues referred to, linked to the company's activities, including, where relevant and proportionate, its business relationships, its products or services that could have negative impacts on these areas and how these risks are managed by the company; (iv) Key performance indicators relevant to its specific business; (v) Where appropriate, a reference to the amounts reported in the annual financial statements and additional explanations in relation to those amounts. ▪ The Portuguese Securities Market Commission has published a template report, of optional adoption[1]. ▪ Environmental-related disclosures should comply with Taxonomy Regulation. Listed-companies must disclose, regarding activities with the environmental objectives of climate change adaptation or mitigation, information on the proportion of turnover, capital expenditures and operating expenses (capex and opex) associated with economic activities eligible and not eligible as	

		environmentally sustainable economic activities for the purposes of the Taxonomy Regulation, as well as qualitative information referred to in Annex I, point 1.2.1, of Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021, relevant to the disclosures referred to. ▪ In addition to the above, concerning the social dimension, Law no. 62/2017 establishes regulation for a balanced representation between men and women in management and supervisory bodies of listed companies and corporate public sector entities. ▪ Concerning the governance dimension, companies must publish annually the corporate governance report, which includes information that enables the assessment of the governance practices of listed companies. ▪ It is market practice for public companies to include ESG-linked KPIs in its remuneration policy, to respond to international ESG indexes and to appoint sustainability committees. ▪ IPCG Corporate Governance Code includes references to sustainable development of the company and to susbtainability criteria to be included in the remuneration policy.	